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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MIGUEL HERNANDEZ,

Defendant and Appellant.

2d Crim. No. B211954
(Super. Ct. No. F421779)
(San Luis Obispo County)

Miguel Hernandez appeals from an order committing him to the California Department of Mental Health for treatment after the trial court determined that he was a mentally disordered offender. (MDO; Pen. Code, § 2962 et seq.)¹ Appellant contends that the evidence does not support the finding that his mental disorder was an aggravating cause of the commitment offense or that he represents a substantial danger of harm to others. We affirm.

Facts and Procedural History

In 2003, appellant was convicted of possession of a weapon in a custodial facility (§ 4502, subd. (a)) and battery on a custodial officer (§ 243.1). Appellant was sentenced to four years state prison.

¹ All statutory references are to the Penal Code.

On August 26, 2008, the Board of Prison Terms (BPT) determined that appellant was an MDO and committed him to Atascadero State Hospital (ASH) for treatment. Appellant petitioned the superior court for trial and waived jury. (§ 2966.)

Brandon Yakush, Ph.D., a staff psychologist at ASH, opined that appellant suffered from a severe mental disorder and met all the MDO criteria.² Evidence was received that appellant suffered from a delusional disorder grandiose type, in which appellant believed he was the son of Presidents Clinton and Bush, was the descendent of Michelangelo and had been kidnapped by the United States Government, that he owned the California penitentiary system and ASH, and that he made large amounts of money every weekend with a race horse and a NASCAR automobile.

Doctor Yakush opined that the severe mental disorder was not in remission at the BPT hearing and that the mental disorder could not be kept in remission without treatment.

Aggravating Cause

Appellant argues that the mental disorder was not a cause or an aggravating cause of the July 16, 2003 commitment offense at the Tulare County Jail. An officer noticed that appellant was wearing a red beanie and asked appellant to hand it over because it was contraband. Appellant told the officer to "come in and get it," brandished a razor weapon, and refused to lie down on the ground.

When the officer attempted to use a stun gun, appellant kicked the officer in the chest and struggled. Officers searched the jail cell and found a six inch piece of cardboard wrapped in plastic with a razor at one end.

² The six criteria for an MDO commitment are: the prisoner (1) has a severe mental disorder; (2) used force or violence in committing the underlying offense; (3) the severe mental disorder was a cause or an aggravating factor in the commission of the underlying offense; (4) the disorder is not in remission or capable of being kept in remission without treatment; (5) the prisoner was treated for the disorder for at least 90 days in the year prior to his parole; and (6) the prisoner poses a serious danger of physical harm to others by reason of the disorder. (§ 2962, subd. (c); *People v. Merfield* (2007) 147 Cal.App.4th 1071, 1075, fn. 2.)

Doctor Yakush opined that appellant's mental disorder was an aggravating factor because appellant suffered from grandiose delusions and believed he was in jail due to a mistaken identity. Acting on those delusional thoughts, appellant assaulted the officer. Appellant later told the officers that he was extremely upset and that he made and brandished the weapon because he believed that he did not belong in jail.

Doctor Yakush testified that appellant was not a violent person by nature "but the grandiose belief bleeds into kind of a paranoid belief" in which appellant believes he has certain attributes and should be treated a certain way. The symptoms were first documented in April 2003 when appellant suffered delusional beliefs and claimed that his mother was in the cell next to him.

Appellant was paroled and arrested in May 2006 for resisting an officer, trespass, and for being under the influence of a controlled substance. In July 2006, the mental disorder caused appellant to believe he "was being misjudged" and should not be in jail. Acting on a delusional belief, appellant manufactured a weapon and assaulted the officer. Doctor Yakush opined that the offense was a violent act, secondary to appellant's delusional thought process.

On review, we may not redetermine the credibility of witnesses or reweigh the evidence. (*People v. Poe* (1999) 74 Cal.App.4th 826, 830.) Doctor Yakush's testimony clearly supports the finding that appellant suffered from a severe mental disorder in 2003 that was an aggravating factor in the commission of the MDO offense. (See *People v. Bowers* (2006) 145 Cal.App.4th 870, 879 [single psychiatric opinion constitutes substantial evidence]; accord, *People v. Zapisek* (2007) 147 Cal.App.4th 1151, 1165.)

Present Dangerousness

Appellant contends that the evidence does not support the finding that he poses a serious danger to others by reason of the mental disorder. (§ 2962, subd. (d).) "The purpose underlying the MDO is to protect the public by identifying those offenders who exhibit violence in their behavior and pose a danger to society. [Citation.]" (*People v. Dyer* (2002) 95 Cal.App.4th 448, 455.)

Doctor Yakush testified that the mental disorder was not in remission, that appellant lacked insight, and that appellant was likely to act out if not treated. The doctor opined that appellant posed a serious danger to others due to the mental disorder, an untreated substance abuse problem, appellant's unwillingness to take medication, and appellant's inability to abide by rules and regulations. While in prison, appellant received 11 disciplinary violations (one for mutual combat), had prior convictions for spousal abuse and resisting arrest, and had two parole violations and two probation violations.

Under the MDO statute, " 'substantial danger of physical harm' does not require proof of a recent overt act" of violence. (§ 2962, subd. (f); see *In re Qawi* (2004) 32 Cal.4th 1, 24.) Appellant suffers from delusional beliefs, lacks insight, has a history of violence, and had not been treatment compliant. Doctor Yakush opined "there's a very high risk that if [appellant] were to leave an institutional setting at this point, he would not comply with the treatment plan, would not take medications," and would suffer delusional beliefs that could escalate and pose a significant risk of harm to others.

Viewing the record in the light most favorable to the judgment, substantial evidence supports the finding that appellant meets all the MDO criteria and represents a substantial danger of physical harm to others by reason of the mental disorder.

The judgment (MDO commitment order) is affirmed.

NOT TO BE PUBLISHED.

YEGAN, Acting P.J.

We concur:

COFFEE, J.

PERREN, J.

Dodie A. Harman, Judge
Superior Court County of San Luis Obispo

Gerald J. Miller, under appointment by the Court of Appeal, for Defendant and Appellant.

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